

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, MARCH 2, 2005**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of March 2, 2005, was called to order by Mayor Beckman at 6:00 p.m.

Present: Council Members – Hansen, Hitchcock, Johnson, Mounce, and Mayor Beckman

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Blackston

C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Actual litigation: Government Code §54956.9(a); one case; *People of the State of California; and the City of Lodi, California v. M & P Investments, et al.*; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- b) Actual litigation: Government Code §54956.9(a); one case; *Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al.*, Superior Court, County of San Francisco, Case No. 323658
- c) Conference with legal counsel – initiation of litigation: Government Code §54956.9(c); two cases
- d) Conference with legal counsel – anticipated litigation – significant exposure to litigation pursuant to subdivision (b) of Section 54956.9; one case; pursuant to Government Code §54956.9(b)(3)(A) facts, due to not being known to potential plaintiffs, shall not be disclosed
- e) Actual litigation: Government Code §54956.9(a); one case; *City of Lodi, a California Municipal Corporation, and Lodi Financing Corporation, a California nonprofit corporation v. Lehman Brothers, Inc. and US Bank National Association*, United States District Court, Eastern District of California, Case No. CIV. S-04-0606 MCE-KJM
- f) Actual litigation: Government Code §54956.9(a); one case; *Lehman Brothers Inc., v. City of Lodi and Lodi Financing Corporation*, United States District Court, Eastern District of California Case No. CIV-S-04-0850 FCD/JFM
- g) Actual litigation: Government Code §54956.9(a); one case; *Fireman's Fund Insurance Company v. City of Lodi, et al.*, United States District Court, Eastern District of California Case No. CIV-S-98-1489 FCD JFM

C-3 ADJOURN TO CLOSED SESSION

At 6:00 p.m., Mayor Beckman adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 7:05 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:14 p.m., Mayor Beckman reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions:

In regard to Item C-2 (a), (b), (c), and (d), negotiation direction was requested and received.

Items C-2 (e), (f), and (g) were not discussed.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of March 2, 2005, was called to order by Mayor Beckman at 7:14 p.m.

Present: Council Members – Hansen, Hitchcock, Johnson, Mounce, and Mayor Beckman

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Blackston

B. INVOCATION

The invocation was given by Pastor Phil Orosco, Lodi Police Chaplains.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Devin Carpenter of Cub Scout Troop 199.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 (a) Mayor Beckman presented a proclamation to George Bradley, Street Superintendent; Steve Dutra, Parks Superintendent; and Ray Fye, Tree Operations Supervisor, proclaiming Saturday, April 2, 2005, as “Arbor Day” in the City of Lodi.

D-3 Presentations – None

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Johnson, Beckman second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

E-1 Claims were approved in the amount of \$1,869,964.10.

E-2 The minutes of February 2, 2005 (Regular Meeting), February 15, 2005 (Shirtsleeve Session), February 15, 2005 (Special Meeting), and February 16, 2005 (Regular Meeting) were approved as written.

E-3 Adopted Resolution No. 2005-39 appropriating funds for emergency removal of underground fuel storage tanks at 230 West Elm Street in the amount of \$25,000, affirmed the City Manager's emergency action, and authorized up to an additional \$15,000.

E-4 Approved an amendment to the scope of work for the Blakely Park Playground Project to include the adjacent Enze/Field Swim Complex in the amount of \$6,500.

E-5 Accepted memorial bench and plaque donation from Joanne Katanic and Janice Katayama in honor of Bonnie Meyer.

E-6 Accepted donations from Lodi-Tokay Rotary for the Ron Williamson Youth Area sign project; the Lodi Association of Realtors, Inc. for new park name signs for Blakely Park and Legion Park; the Lodi Lions Club for the purchase of new trash receptacles for Legion Park and the purchase of engineered wood fiber for Emerson Park, Henry Graves Park, and Legion Park; and appropriated the donated funds toward the various park projects.

Council Member Hansen thanked the Lodi-Tokay Rotary, Lodi Association of Realtors, and Lodi Lions Club for their generous contributions.

E-7 Approved the Improvement Deferral Agreement for 214 Kelly Street and authorized the City Manager and City Clerk to execute the agreement on behalf of the City.

E-8 “Adopt resolution approving operation and maintenance agreement for water main abandonment at 104 East Turner Road” was **removed from the Consent Calendar, discussed following approval of the Consent Calendar, and subsequently pulled from the agenda.**

- E-9 Adopted Resolution No. 2005-40 approving an agreement between the City of Lodi and Spare Time Inc., dba Twin Arbors Athletic Club, for use of pools at Twin Arbor Athletic Club facilities for the period of May 31, 2005 to July 24, 2005.
 - E-10 Authorized the City Manager to execute the cooperative agreement for the provision of incident command system staff with the San Joaquin County Office of Emergency Services.
 - E-11 "Adopt resolution authorizing the City Manager to allocate \$25,000 in Public Benefit Program funds for the Lodi Power Shift Initiative pilot project and authorizing the City Manager to execute a contract with the WorldLink Foundation to assist in managing and implementing this pilot project" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**
 - E-12 Adopted Resolution No. 2005-41 authorizing the City Manager to allocate a Public Benefits Program grant in the amount of \$25,000 to Kubota Tractor Corporation for a demand-side management project.
 - E-13 Received report on repairs to a turbine pump at the White Slough Water Pollution Control Facility and affirmed the City Manager's actions regarding emergency repairs in the amount of \$11,780.
 - E-14 Set public hearing for March 16, 2005, to consider the Planning Commission's recommendation to amend various sections of the Lodi Zoning Ordinance that deal with the appeal process for planning decisions (proposed amendment will establish a standard time period to file all planning appeals and will also add language to clarify the appeal process).
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ACTION ON ITEMS REMOVED FROM THE CONSENT CALENDAR

- E-11 "Adopt resolution authorizing the City Manager to allocate \$25,000 in Public Benefit Program funds for the Lodi Power Shift Initiative pilot project and authorizing the City Manager to execute a contract with the WorldLink Foundation to assist in managing and implementing this pilot project"

Rob Lechner, Manager of Customer Service and Programs, reported that Electric Utility is trying to shift more attention toward "green energy" education, e.g. wind, solar, fuel cells, etc. The WorldLink Foundation produced a video entitled, "Power Shift Initiative" designed for high school students. The Utility has a "Living Wise" campaign designed for sixth grade students, a solar education program for kindergarten through high school age youth, and will have a Solar Olympics program on May 7 for all school age children.

In answer to Mayor Pro Tempore Hitchcock, Mr. Lechner stated that the "Lodi Next Generation Home Project" was not pursued. He reported that a portion of the \$25,000 is for WorldLink Foundation staff time, in addition to the video and curriculum. Mr. Lechner stated that the Utility will also commission WorldLink to help plan the rest of its "green energy" program.

MOTION / VOTE:

The City Council, on motion of Council Member Hitchcock, Mounce second, unanimously adopted Resolution No. 2005-42 authorizing the City Manager to allocate \$25,000 in Public Benefit Program funds for the Lodi Power Shift Initiative pilot project and authorizing the City Manager to execute a contract with the WorldLink Foundation to assist in managing and implementing this pilot project.

- E-8 "Adopt resolution approving operation and maintenance agreement for water main abandonment at 104 East Turner Road"

Public Works Director Prima reported that the City had a water main that ran parallel to the railroad tracks in an easement along the back side of property south of Turner Road and west of Stockton Street. A business recently extended a building over the water main. It was done without a building permit. Staff felt that the simplest thing to do would be to abandon that portion as a public main. The business would have to install backflow devices.

Mayor Pro Tempore Hitchcock was opposed to staff's recommendation, as it abandons a public asset for the convenience of a private corporate business. She felt that the City should be compensated; otherwise it would encourage this type of situation.

In answer to Council inquiries, City Attorney Schwabauer stated that, presumably, the easement states that property owners cannot build over the water main without seeking permission and as a legal matter the City could require them to destroy the structure.

Mr. Prima stated it was his understanding that, in the case of additions done without building permits, the property owner must either tear it down or obtain a building permit and pay a penalty.

Council Member Johnson asked staff to return to Council with more information regarding who is responsible, what the cost of the building permit and penalties would be, etc.

MOTION / VOTE:

The City Council, on motion of Council Member Johnson, Beckman second, unanimously moved the subject matter to the regular City Council meeting of March 16, 2005.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Tyler Rothermel presented information to Council from the SkatePark Association of the United States of America (filed). He asked that the City consider implementing a policy whereby BMX bicycles can be allowed at the skate park.

Mayor Beckman informed Mr. Rothermel that the City Manager would contact him regarding his request.

G. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Hansen provided an update on a recent San Joaquin Council of Governments (SJCOG) meeting he attended, at which a decision was made on how to spend Surface Transportation Program (STP) funds over a three-year period. All city representatives voted to allow \$2.8 million in STP funds to be spent on regional projects and give SJCOG flexibility on how to spend it. Regional projects that had been identified included the interstates and highways of 205, 5, 12, 99, and 120. The two County representatives at the meeting wanted to spend the entire \$16 million on local roads and projects. Another important issue that the SJCOG will be dealing with in the near future is the Regional Transportation Impact Fee, which will be assessed on new homes, businesses, and industries that come into San Joaquin County.

City Manager King explained that some people viewed the Federal STP money as successor of local maintenance funds and felt that it should stay within the local jurisdiction for maintenance purposes. The SJCOG staff felt that the Federal STP funds were regional money that should go toward regional projects. He reviewed the options that were considered at the meeting.

H. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

None.

I. PUBLIC HEARINGS

- I-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Beckman called for the public hearing to consider and approve community input and proposals for uses of the City's 2005-06 Federal allocation of Community Development Block Grant and HOME Program funds and the reallocation of available funds from previous program years.

Joseph Wood, Community Improvement Manager, reported that a public meeting was held on December 7 and applications for Community Development Block Grant (CDBG) and HOME Program funds were accepted through January 14. Seventeen applications were received for a total of \$795,370 in CDBG funds and \$280,360 in HOME funds. Unused balances from previous years in the amount of \$283,427.97 are being brought forward at this time for reallocation. Mr. Wood made the following recommendations:

CDBG Program Funding

Public Works handicapped ramp project – \$250,000
LOEL Center & Gardens toward property acquisition for senior housing – \$61,500
Second Harvest Food Bank expansion of services – \$10,000
Lodi Cat Connection for spay and neuter program – \$16,000
Parks & Recreation Van Buskirk Park playground surfacing project – \$65,250
Parks & Recreation Hale Park playground improvements – \$100,000
Salvation Army site acquisition of 600 N. Sacramento Street and improvements to include off-street parking, loading dock, and ramp – \$196,000
Fair Housing services to low-income residents – \$26,620
CDBG/HOME program administration costs – \$70,000

HOME Program Funding

Lodi Housing Assistance Programs – \$280,360

Reallocation

LOEL Center & Gardens buy-down of 301 E. Oak Street – \$128,319
LOEL Center & Gardens acquisition of 303 E. Oak Street for senior housing – \$100,109
Salvation Army for purchase of new truck to expand food bank services – \$55,000

Mr. Wood described the reasons that certain requests were denied, as outlined in the staff report.

Hearing Opened to the Public

- Brad VanderHamm, Executive Director of the 180 Teen Center, estimated that the operating time that the center spends on religious activities was approximately 25%, so 75% of its request for \$62,400 to re-roof the facility and construct a masonry wall around the perimeter of the parking lot should be eligible for funding.
- Paul Rengh, Chief Executive Officer for the Second Harvest Food Bank, reported that last year it distributed over half a million pounds of food in Lodi through the Senior Brown Bag Program, of which 192 recipients were Lodi residents. The Food for Thought Program at Lawrence Elementary School and the Boys and Girls Club has 140 youth participants. Supplemental groceries are provided to non-profit charities in Lodi through the Food Assistance Program. Mr. Rengh encouraged the public to contact congressmen and senators to ask that they not cut CDBG funding.
- Pastor Steve Jarrett, Board Member of the 180 Teen Center, stated that he could not find the regulations that exclude funding on a percentage level for religious use of facilities. Pastor Jarrett stated that he had prepared a list of programming at the Teen Center, which indicates it operates on a 70% non-religious basis and 30% religious use. He noted that most of the reallocation money is going toward a senior center and asked Council to reconsider the 180 Teen Center request.

- Doug Keen stated that he was a former owner of the building out of which the Teen Center now operates. He reported that the roof leaked when he bought the building six years ago. He made some repairs to the roof, as well as the previous owner, and it now badly needs to be replaced.
- John Meek, President of the Greater Stockton Emergency Food Bank, thanked Council for its past support.
- Tim Vial, representing the Greater Stockton Emergency Food Bank, submitted a letter (filed) and stated that the Food Bank submitted a CDBG grant application for construction of a new warehouse for food storage and distribution. The Food Bank has raised \$100,000 thus far toward the \$640,000 project. The new warehouse would allow the Food Bank to handle 750,000 additional pounds annually. Each year 11,000 Lodi residents are served by the Food Bank.

In answer to Council inquiries, Mr. Wood estimated that additional funding will be received as well as some program income that can be reallocated within the next four to five months. He explained that after judging for basic eligibility, project readiness criteria is considered. The intent of the reallocation is to apply the funding toward projects that will be able to allocate the funds immediately. He expected that mid-year allocations could be close to \$75,000. Mr. Wood briefly reviewed the sources of reallocated funds as outlined in the staff report, explained the reallocation process, and reasons why these funds were not expended. He stated that the United States Department of Housing and Urban Development offers a "108 Program" that allows cities to apply for and borrow against future allocations.

- Sue Pixler of Lodi Cat Connection reported that in eight months the "Fix a Feline" program has altered 256 cats. The cost to the City in holding and euthanizing cats amounts to \$75 per kitten. Every dollar spent on a spay and neuter program saves \$3 to \$6 in expenditures on animal services. She noted that altering dogs reduces aggressive behavior, which is also a benefit to the citizenry.

Public Portion of Hearing Closed

Mayor Beckman felt that all the programs that applied for grants are beneficial and deserve to be fully funded. He pointed out, however, that this process is merely a redistribution of money. The fact that the federal government has this money is proof that it is taking too much from taxpayers to begin with. He voiced support for eliminating the program altogether and reducing federal taxes by a proportionate amount.

Council Member Hansen countered that as long as the government can find ways to help the rich through tax loopholes, etc. then assistance to individuals and programs in need should be continued. He believed there would be negative social consequences in eliminating these programs.

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Mounce second, adopted Resolution No. 2005-43 approving the projected use of funds for the 2005-06 Federal allocation of CDBG and HOME program funds, and further reallocating available unobligated funds from previous program years, as detailed below. The motion carried by the following vote:

Ayes: Council Members – Hansen, Hitchcock, Johnson, and Mounce

Noes: Council Members – Mayor Beckman

Absent: Council Members – None

2005-06 Federal allocations of CDBG funds

(1)	City of Lodi Public Works Department Handicapped Ramp Project	\$250,000
(2)	LOEL Center & Gardens acquisition of 303 E. Oak Street for Senior Housing Apartment Units	\$ 61,500
(3)	Lodi Cat Connection operation of Trap-Neuter-Vaccinate Program for cats and dogs within target area	\$ 16,000
(4)	City of Lodi Parks and Recreation Van Buskirk Park poured in place playground surfacing	\$ 65,250
(5)	City of Lodi Parks and Recreation Hale Park – tot lot playground	\$100,000
(6)	Salvation Army Phase 1 – site acquisition 600 N. Sacramento Phase 2 – improvements to include off-street parking, loading dock, and ADA ramp	\$196,000
(7)	Fair Housing services to low-income residents	\$ 26,620
(8)	Program Administration costs related to administration of CDBG/HOME Program	\$ 70,000
(9)	Second Harvest Food Bank service expansion	\$ 10,000
Total Distribution of 2005-06 CDBG Allocation		\$795,370

2005-06 Federal allocations of HOME funds

(1)	City of Lodi Housing Assistance Programs Down Payment Assistance Loan Program	\$280,360
Total Distribution of 2005-06 HOME Allocation		\$280,360

Reallocation of unused available CDBG and HOME funds from previous program years to supplement 2005-06 funding and reduce balance of unused funds

(1)	LOEL Center & Gardens (04-10) buy-down of 301 E. Oak Street	\$128,319
(2)	LOEL Center & Gardens acquisition of 303 E. Oak Street for Senior Housing Apartment Units	\$100,109
(3)	Salvation Army – purchase of a new 16' box truck to allow expansion of Food Bank services	\$ 55,000
Total Distribution of Reallocation		\$283,428

I-2 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Beckman called for the public hearing to consider resolution approving new rates for solid waste collection.

City Manager King explained that this increase is required in the franchise agreement. At the time the rate structure was approved, Council asked that subsequent rate increases be subject to a noticed hearing to alert the public.

Public Works Director Prima reported that the contract the City has with Central Valley Waste provides for an annual increase based on the consumer price index. This year, the calculation resulted in a 1.8% increase. For a 38-gallon refuse cart, the increase amounts to 34 cents a month, and for a 64-gallon cart, the increase would be 52 cents per month. He noted that staff has worked with Central Valley Waste to get the problem with leaky vehicles corrected. They have implemented vehicle checking procedures and carry spill kits on their trucks.

In response to Mayor Pro Tempore Hitchcock, Tom Sanchez of Central Valley Waste stated that their vehicles are depreciated at 7 to 10 years. Eight new trucks were purchased for Lodi in 2002-03. There are 10 trucks operating in Lodi and, of those, the oldest are two years old.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, unanimously adopted Resolution No. 2005-44 approving new rates for solid waste collection effective on all bills prepared on or after April 1, 2005.

J. COMMUNICATIONS

J-1 Claims filed against the City of Lodi – None

J-2 Appointments – None

J-3 Miscellaneous – None

K. REGULAR CALENDAR

K-1 “Review of City of Lodi Comprehensive Annual Financial Report for the year ended June 30, 2004, by the Certified Public Accounting firm of Macias Gini & Company”

City Manager King stated that the auditors have offered an opinion without qualifications that the City’s financial records accurately reflect the City’s financial position.

Finance Director Krueger explained that the responsibility of the Finance Department is to prepare the Comprehensive Annual Financial Report (CAFR) and the responsibility of the audit firm is to check the amounts as they are represented in the CAFR.

Scott Brunner of Macias Gini & Company stated that his firm prepared the Independent Auditor’s Report, which is on pages 1 and 2 of the CAFR (filed) and attested to the accuracy of the numbers.

Referencing page 3 of the financial analysis, Mayor Pro Tempore Hitchcock noted the ending fund balance decreased by \$6,464,000.

Mr. Krueger replied that the decreased amount was due to costs to complete the police facility, as well as a couple of other capital projects that were constructed.

In reference to page 8 of the management analysis, Mayor Pro Tempore Hitchcock pointed out that the total fund balance was \$1.4 million; however, the unreserved fund balance was only \$156,000.

Mr. Krueger explained that other elements of what constitutes the total fund balance are inclusive of encumbrances. The policy in the past has been to take encumbrances at the end of one fiscal year, move them forward into the next fiscal year, and appropriate an amount out of the fund balance to pay for those contracts. Mr. Krueger stated that was not done this year. Instead, the appropriations that Council had approved for 2004-05 were used to pay for contracts that were rolled over. Mr. Krueger suggested that for future purposes, in the case of encumbrances, that the policy be changed and it be

considered whether there is enough fund balance to roll over encumbrances as well as an appropriation amount to do so. He recalled that a month ago Council approved receipt of the Vehicle License Fee financing amount in exchange for a receivable. This amounted to \$921,000 that is not accounted for in the CAFR.

In reply to Mayor Pro Tempore Hitchcock, Mr. Brunner stated that the City has a module in the JD Edwards accounting system that it does not utilize that would track the depreciation of assets. It is automatically linked to the financial records. Currently, the City manually tracks the depreciation of assets. He suggested that it would be more efficient and accurate to use the module. Mr. Brunner also noted that the City does not have a cost allocation plan, which it needs in order to claim for reimbursement of administrative costs under the Federal Transit Administration.

Mr. Krueger stated that the cost allocation plan is a top priority.

In answer to questions posed by Mayor Pro Tempore Hitchcock, Mr. Brunner acknowledged that some cities fully fund their internal services and insurance funds; however, it is not common. A common target is 50%. Lodi is just under that amount with \$5.6 million in liability and \$2 million in assets. He explained that the "confidence level" referred to by the actuary means the probability that the claims will settle at or below that dollar amount, e.g. \$5.6 million at the 70% level.

MOTION/ VOTE:

There was no Council action taken on this matter.

- K-2 "Receive report and provide direction regarding the Downtown Lodi Business Partnership's request for eliminating parking between 3:00 a.m. and 6:00 a.m. (School, Sacramento, and Church Streets between Lodi Avenue and Locust Street)"

Public Works Director Prima recalled that a request was received from the Downtown Lodi Business Partnership (DLBP) some time ago to establish a no-parking zone from 3:00 a.m. to 6:00 a.m. on all downtown streets. Mr. Prima told them he was not supportive of the request and needed a letter from the DLBP Board if they wanted the matter brought to Council. A scaled-down version was agreed to by some of the DLBP representatives.

PUBLIC COMMENTS:

- Roger Reimche, DLBP member, stated that he would discuss with the DLBP Board, staff's recommendations as outlined in the staff report.

Council Member Mounce noted that even with prior notification there is difficulty in clearing the streets of cars prior to the Street Fair events. She favored staff's recommendation.

Council Member Hansen noted that a "blue sheet" was received on this item from a DLBP member (filed). He was opposed to prohibiting parking to those who have handicapped parking placards on their vehicles. He asked Mr. Reimche to take staff's five recommendations back to the DLBP Board and determine whether collectively they can agree to it and then bring the matter back to Council.

Mr. Prima reported that a notice regarding this matter was hand delivered to the Hotel Lodi manager and no response was received.

Mayor Pro Tempore Hitchcock and Council Member Johnson agreed that consensus should be reached by the DLBP Board before Council considers the matter.

MOTION / VOTE:

There was no Council action taken on this matter.

K-3 "Approve policy regarding "Outside City" Water Rates"

City Manager King noted that the Lodi Municipal Code allows on a case-by-case basis to sell water outside the City limits and requires that a surcharge equal to 50% of the cost of the water be applied. The surcharge has no relationship to the cost of providing the service. It is a discretionary revenue source to the City and it is staff's opinion that it should go to the General Fund. In the past, the surcharge has gone to the Water Fund.

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, unanimously approved the policy regarding "Outside City" water rates, effective the current fiscal year 2004-05, as described below:

- Surcharge revenue from "Outside City" services shall be placed in the General Fund; and
- Surcharge shall be listed separately on the utility bill.

K-4 "Introduce ordinance repealing Lodi Municipal Code Title 8, Health and Safety, Chapter 8.24 in its entirety relating to Comprehensive Municipal Environmental Response and Liability Ordinance (MERLO)"

City Attorney Schwabauer reported that the Comprehensive Municipal Environmental Response and Liability Ordinance (MERLO) has been partially preempted by the Ninth Circuit Court of Appeals, U.S. District Judge Frank Damrell, and completely preempted by the California Court of Appeal, Third Appellate District. Mr. Schwabauer recommended that the ordinance be repealed.

MOTION / VOTE:

The City Council, on motion of Council Member Hitchcock, Hansen second, unanimously introduced Ordinance No. 1755 repealing Lodi Municipal Code Title 8, Health and Safety, Chapter 8.24 in its entirety relating to Comprehensive Municipal Environmental Response and Liability Ordinance (MERLO).

K-5 "Approve expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation and other various cases being handled by outside counsel (\$24,952.91) and approve Special Allocation covering general litigation matter expenses (\$11,553.61)"

City Attorney Schwabauer reported that he confirmed these invoices had not been previously paid. He recommended their approval for payment with the exception of \$1,100 in fees that he felt were not appropriate.

MOTION / VOTE:

The City Council, on motion of Council Member Hitchcock, Beckman second, unanimously approved expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation and other various cases being handled by outside counsel in the amount of \$24,952.91 and approved Special Allocation covering general litigation matter expenses in the amount of \$11,553.61, as detailed below:

Kronick, Moskovitz, Tiedemann & Girard				
Matter No./Description	Coverage Period	Invoice No.	Amount	
11233.001 General Advice	Through 10/25/04	216546	\$	250.62*
11233.009 Rogers v. County of San Joaquin, et al.	Through 10/25/04	216546	\$	5,358.73*
			Less	(400.00)
11233.010 Phelps v. City of Lodi et al.	Through 10/25/04	216546	\$	7,044.26*
			Less	(700.00)

Continued March 2, 2005

11233.014 Fireman's Fund (#04-15136)	Through 10/25/04	216546	\$	90.00
11233.016 Hartford Litigation	Through 10/25/04	216546	\$	19.00
11233.017 M&P Investments	Through 10/25/04	216546	\$	52.36
11233.022 Sphere of Influence-White Slough	Through 10/25/04	216546	\$	748.50
11233.023 City of Lodi v. City of Stockton	Through 10/25/04	216546	\$	10,209.46
11233.024 Stockton Family Farmers Coalition	Through 10/25/04	216546	\$	1,678.18
11233.025 City of Stockton v. City of Lodi	Through 10/25/04	216546	\$	601.80
				\$ 24,952.91

*** Requires Special Allocation for payment from General Fund.**

L. ORDINANCES

None.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 10:38 p.m., in memory of Bud Shropshire, Lodi Police Partner volunteer, who passed away on March 1.

ATTEST:

Susan J. Blackston
City Clerk